

IN THE MATTER OF : BEFORE THE
ROBERT KIFFNEY : HOWARD COUNTY
Petitioner : BOARD OF APPEALS
: HEARING EXAMINER
: BA Case No. 09-001V
.....

DECISION AND ORDER

On March 16, 2009, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Robert Kiffney for a retroactive variance to reduce the 30-foot rear setback to 18 feet, 7 inches, for a deck attached to a single-family detached dwelling located in an R-20 (Residential: Single: Family) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioners provided certification that notice of the hearing was advertised and certified that the property was posted as required by the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

Larry Tupis testified in favor of the petition on behalf of the Petitioner. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The 12,017-square foot, irregularly shaped property is located on the west side of Stonecrest Drive about 500 feet north of Poplar Crest Drive and is known as 4362 Stonecrest

Drive (the "Property"). The Property lies in the 2nd Election District and is identified on Tax Map 25, Grid 19, as Parcel 69, Lot 8. It is part of the Stone Manor Section 3 subdivision.

2. Lots 1 and 8 in this subdivision each have frontage on Stonecrest Drive, and are separated by a 33-foot private use-in-common driveway and utility easement for Lots 2-7. The Property itself is six-sided. The curving lot line along Stonecrest Drive appears to about 20 feet in length. The lot line along the private driveway easement is about 120 wide. The northwest side property line is about 118 feet deep and the southeasterly lot is about 126 feet deep. The two obliquely angled property lines (the "Open Space Lot property lines") farthest from Stonecrest Drive are about 35 and 25 feet in length. The recorded building restriction lines are: 10 feet along the pipestem lot line, 39 feet along the Stonecrest Drive lot line, 30 feet along the northwest lot line, 10 feet along the southeasterly lot line, and 30 feet along the obliquely angled lot lines. A 20-foot private drainage and utility easement runs along the southeasterly lot line, just south of the Open Space Lot.

3. The Property is improved by a two-story single-family detached frame dwelling. Access is provided via a driveway off Stonecrest Drive.

4. Vicinal Properties. Adjacent properties are also zoned R-20. The northern property is Open Space Lot 13. To the east is Lot 9 of the Stone Manor Section 3 subdivision. To the south is Lot 1 and to the west, Lot 7.

5. The Petitioner is requesting a retroactive variance from the recorded 30-foot building line restriction and from Section 128.1.d for a deck. The deck would be 28 feet wide, 19 feet deep where it attaches to a portion of the dwelling that is seven feet less in depth and 12 feet deep in the area of the former patio. Because the proposed deck would encroach 11.3 feet into the 30-foot

setback, the deck would be set back 18.7 feet from the nearest point of the Open Space Lot property lines, according to the variance plan.

6. During the proceeding, I expressed concern that the placement of the deck near the Open Space Lot may result in the encroachment into this Lot. Mr. Kiffney stated that the Petitioner would agree to a condition that a portion of the lot line behind and to the sides of the deck be landscaped.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance for the deck complies with Section 130.B.2.a(1) through (4), and therefore may be granted, but not the gazebo, which does not comply with Section 130.B.2a(4).

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, there is no dispute that the lot is irregularly shaped. Consequently, I conclude the Property's shape is a unique physical condition causing the Petitioner practical difficulties in complying with the setback requirement, in accordance with Section 130.B.2.a(1).

2. The proposed deck will be used for a permitted purpose. Many neighboring dwellings have rear decks and the proposed deck is a reasonable size. Subject to the condition that the Petitioner shall install a Type A landscape buffer behind and to one side of the deck, the variance for the deck, if granted, I conclude the requested variance will not alter the essential character of the neighborhood in which the Property is located nor substantially impair the appropriate use or development of adjacent property, nor be detrimental to the public welfare, in accordance with Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Property's shape and was not created by the Petitioner, in accordance with Section 130.B.2.a(3).

4. The deck is a reasonable size and will encroach into the setback only a foot or so more than the 10-foot encroachment permitted by Section 128.1.d. Within the intent and purpose of the regulations, then, the deck variance is the minimum necessary to afford relief, in accordance with Section 130.B.2.a(4).

ORDER

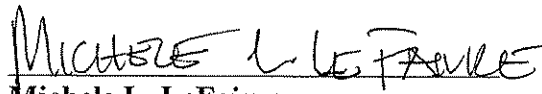
Based upon the foregoing, it is this 30th Day of March 2009, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Robert Kiffney for a variance to reduce the 30-foot building restriction line to 18 feet seven inches for a deck in an R-20 Zoning District is **GRANTED**;

Provided, however, that:

1. The variance shall apply only to the deck use and structure as described in the petition submitted and not to any activities, uses, structures, or additions on the Property.
2. The Petitioner shall install a Type A landscape buffer along the northwest portion of the Property's perimeter, beginning at the northwestern-most lot line 30 feet inward from the Open Space Lot property line, and running easterly along the two obliquely angled lot lines to where the easternmost angled lot line meets the 126 \pm -foot southeasterly lot line. The Petitioner is not required to landscape along the southeasterly lot line where the 20-foot private drainage easement runs.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed: 3/31/09

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.